

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

1 A review of the Petition reveals that, although Petitioner sets
2 forth his allegations in four grounds for relief, he actually asserts a
3 single claim. Petitioner alleges that, when he was sentenced in 1994,
4 a restitution fine was imposed and he was told that he "would get a pay
5 job in prison." Petitioner alleges that he had a wage-paying prison job
6 years ago but, because of his health problems, the California Department
7 of Corrections and Rehabilitation ("CDCR") no longer will assign him a
8 "pay job" and is not letting him "work it [presumably, the restitution
9 fine] off," and thus, he has no means of paying the restitution fine.
10 (Petition at 5-6.) As relief, Petitioner apparently seeks an order
11 directing that he be allowed to "work it off to take care of the court
12 order." (*Id.* at 6.)

13
14 Generally, a state prisoner challenging the fact or duration of his
15 state conviction or sentence on the grounds of alleged violations of
16 federal rights, and seeking release from imprisonment as a result, does
17 so by way of a federal habeas corpus petition pursuant to 28 U.S.C. §
18 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S. Ct. 1827, 1841
19 (1973); Sisk v. Branch, 974 F.2d 116, 117 (9th Cir. 1991). Here, it is
20 unclear whether Petitioner is challenging the restitution fine imposed
21 in 1994, or the subsequent circumstances that have caused him to be
22 unable to pay that fine. If the former, his claim is not cognizable.
23 The federal habeas statute does not provide jurisdiction over a claim
24 challenging a restitution order, even when the petitioner is
25 incarcerated. Bailey v. Hill, ___ F.3d ___, 2010 WL 1133435 (9th Cir.
26 March 25, 2010). In Bailey, the petitioner pleaded guilty and was
27 ordered to pay restitution. He filed a Section 2254 petition alleging
28 that his counsel provided ineffective assistance by not objecting to the

1 restitution order. The Ninth Circuit affirmed the dismissal of the
2 petition on the ground that the petitioner did not meet Section 2254's
3 "in custody" requirement for jurisdiction. *Id.*, at *1. The Ninth
4 Circuit concluded that Section 2254 does not confer jurisdiction over a
5 state prisoner's in-custody challenge to the non-custodial portion of
6 his criminal sentence, such as a restitution order. *Id.*, at *5-*6.
7 Thus, this Court lacks jurisdiction to consider Petitioner's challenge
8 to the restitution order imposed by the trial court, if, in fact, that
9 is the claim asserted by the Petition.

10
11 If, instead, Petitioner is challenging the CDCR's failure to
12 provide him with a wage-paying job that would enable him to make
13 restitution payments, his claim is not cognizable under Section 2254.
14 The only relevant question on federal habeas review is "whether a
15 conviction violated the Constitution, laws, or treaties of the United
16 States." Estelle v. McGuire, 502 U.S. 62, 68, 112 S. Ct. 475, 480
17 (1991). Petitioner's apparent complaint about the CDCR's failure to
18 assign him a wage-paying job is a challenge to the conditions of his
19 confinement, not a habeas claim. The "proper remedy for a state
20 prisoner who is making a constitutional challenge to the conditions of
21 his prison life, but not to the fact or length of his custody," is a
22 civil rights action under 42 U.S.C. § 1983, not a habeas action.
23 Preiser, 411 U.S. at 500, 93 S. Ct. at 1841; see also Badea v. Cox, 931
24 F.2d 573, 574 (9th Cir. 1991).

25
26 While the Court may construe a flawed habeas petition as a civil
27 rights action, see Willwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct.
28 407, 409 (1971), doing so in this case would be inappropriate, given

1 that: (1) the Petition was not accompanied by either the \$350 filing
2 fee or the required authorization by Petitioner to have the \$350 filing
3 fee deducted from his trust account, pursuant to 28 U.S.C. § 1915(b);
4 (2) the Petition was not accompanied by the required declaration in
5 support of a request to proceed without prepayment of the filing fee;
6 (3) the Petition was not accompanied by the required certified copy of
7 Petitioner's trust fund account statement for the preceding six months,
8 pursuant to 28 U.S.C. § 1915(a)(2); (4) although Petitioner has sought
9 state habeas relief based on his present allegations, there is no
10 evidence that he has exhausted his administrative remedies as to his
11 claim, a prerequisite to filing a civil rights action;¹ (5) Petitioner
12 has named an inappropriate and immune defendant (the state trial court
13 judge who denied him habeas relief) and has not identified the capacity
14 in which any other defendant is sued under 42 U.S.C. § 1983; and (6)
15 because Petitioner is not incarcerated in this district,² this Court is
16 not the appropriate venue for any such civil rights action.

17
18 Based upon the foregoing, it is plain that the Court lacks
19 jurisdiction to consider the Petition. Accordingly, IT IS ORDERED that
20 Judgment shall be entered dismissing the instant Petition without
21 prejudice.


22
23 ¹ 42 U.S.C. § 1997e(a) provides that: "No action shall be
24 brought with respect to prison conditions under section 1983 of this
25 title, or any other Federal law, by a prisoner confined in any jail,
26 prison, or other correctional facility until such administrative
remedies as are available are exhausted." Section 1997e(a) requires
exhaustion "irrespective of the forms of relief sought and offered
through administrative avenues." Booth v. Churner, 531 U.S. 731, 741
n.6, 121 S. Ct. 1819, 1825 n.6 (2001).

27 ² Mule Creek State Prison, at which Petitioner is incarcerated,
28 is located within the boundaries of the United States District Court for
the Eastern District of California.

1 In addition, pursuant to Rule 11(a) of the Rules Governing Section
2 2254 Cases in the United States District Courts, the Court has
3 considered whether a certificate of appealability is warranted in this
4 case. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484-
5 85, 120 S. Ct. 1595, 1604 (2000). The Court concludes that a
6 certificate of appealability is unwarranted and, thus, is DENIED.

7
8 IT IS FURTHER ORDERED that the Clerk shall serve copies of this
9 Order and the Judgment herein on Petitioner.

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11 DATED: April 29, 2010.

12 
13 MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE

14 PRESENTED BY:

15 
16 MARGARET A. NAGLE
17 UNITED STATES MAGISTRATE JUDGE